

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7329 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHRIMATI SHAKRIBEN WIDOW OF RUPSING NATHUSING THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7329 of 2004
MR RITESH B DAVE for Petitioner No. 1
MR AY KOGJE, LD.AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenuue, who is a widow lady detenuue, has challenged the detention order dated 25.2.2004, by which she is detained as a

"bootlegger", under the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner under the Bombay Prohibition Act. It is alleged against the petitioner that, the petitioner is dealing in country made liquor. After considering the aforesaid cases, and after reaching subjective satisfaction, the detaining authority has detained her as a "bootlegger" under PASA. The petitioner has challenged the impugned order by way of this petition.

3. Learned advocate for the petitioner has submitted that, at the relevant time, when the detention order was passed by the authority, the petitioner was already in judicial custody in connection with cases No.3, 4 and 5. It is submitted that there is nothing on record to show that the petitioner has even applied for bail. It is further submitted that, the detaining authority has not properly reached the subjective satisfaction while coming to the conclusion that the petitioner, on presentation of application for bail, will get the bail and will continue her illegal activities.

4. Learned Advocate for the petitioner further submitted that, in spite of the fact that the petitioner is in judicial custody, it is mentioned in the order that, after submitting bail application at any point of time, the petitioner may continue her activity after getting the bail. It is further submitted that there is no material available with the authority for coming to the satisfaction that even though the petitioner is already in judicial custody, she will be released on bail on submitting application for bail. It is not stated as to on what basis the authority has reached the subjective satisfaction that the petitioner will continue her alleged illegal activities again after getting the bail.

5. In this connection, learned Advocate for the petitioner has relied upon the decision of the Apex Court in *Amritlal & Others vs. Union Government and others* reported in AIR 2000 SC 3675, wherein it is held as under:-

"4. In *Agustin's decision* (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh v. District*

Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal, I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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"6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

"7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached

on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

6. So far as the aforesaid aspect is concerned, it is, no doubt, true that the authority has not stated as to on what basis the authority has reached subjective satisfaction that the petitioner will get bail on presenting the application for bail and she will continue the alleged illegal activities again, and, therefore, the petition is required to be allowed.

7. It was next argued by the learned advocate for the petitioner that the cases registered against the petitioner are all in connection with Prohibition Law and, therefore, it can be said that the petitioner has violated law and order and not the public order.

8. So far as the aforesaid contentions are concerned, no affidavit-in-reply is filed by the authority, controverting the said contentions nor is any file produced before the Court. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it would be presumed that the averments made in the petition are correct because they stand uncontroverted. In view of the said aspect also, the averments made in this behalf are required to be accepted. Since the averments are not controverted, and also on the ground that the authority has not stated in the order as to on what basis it has reached the subjective satisfaction that on presenting the application for bail the petitioner will be released on bail, and also in view of the judgment referred to above, the petition is required to be allowed.

9. In view of what is stated above, this petition is allowed. The order of detention dated 25.2.2004 is quashed and set aside. The detenue, Shakriben widow of Rupsing Nathusing Thakore, is ordered to be set at liberty forthwith, if she is not required in connection with any other case.

10. At this stage, learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Gaikwad Haveli Police Station area upto 31st October, 2004, unless she is required to appear in any other case for attending the court. Learned advocate for the petitioner has further submitted that he is making the statement after taking instructions from the detenue. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care

of by the authorities. However, if any bail application is preferred by the petitioner, it is for the concerned Magistrate to decide the same on its own merits and in accordance with law. If bail is rejected then there is no question of monitoring the statement. In case, if petitioner is released on bail, then she will not enter into Gaikwad Haveli Police Station area upto 31st October, 2004. Rule is made absolute to the aforesaid extent.

(P.B. Majmudar, J.)

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